

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5494

IN THE MATTER OF:

Served January 11, 1999

Investigation of Unauthorized )  
Transfer of Control From OLANDERS )  
CLARK, Trading as CLOUD NINE )  
COACHWAYS, WMATC No. 318, to CLOUD )  
NINE COACHWAYS, INC. )

Case No. MP-98-61

This investigation was initiated on November 16, 1998, in Order No. 5449, after respondents failed to satisfy the document filing conditions of Commission Order No. 5302 approving transfer of Certificate of Authority No. 318 from Olanders Clark to Cloud Nine Coachways, Inc.

Under the Compact, Commission approval must be obtained to transfer control over a WMATC carrier's assets, operations or certificate of authority.<sup>1</sup> On April 6, 1998, the Commission approved respondents' application to transfer control of Mr. Clark's operations to the corporation, contingent on respondents filing certain specified documents.<sup>2</sup> Because respondents failed to file all of the required documents within the 180 days permitted under Commission Regulation No. 66, approval was later deemed denied.<sup>3</sup> Among the documents respondents failed to file were an acceptable certificate of insurance and safety inspection certificates for two vehicles.

Order No. 5449 directed Cloud Nine Coachways, Inc., to refrain from and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District unless and until otherwise ordered by the Commission.

Order No. 5449 further directed respondents to produce within thirty days any and all books, papers, correspondence, memoranda, contracts, agreements, and other records and documents, including any and all stored electronically, that are within respondents' individual or joint possession, custody or control and which relate to the transportation of passengers for hire between points in the Metropolitan District during the period beginning January 1, 1998, and ending November 16, 1998, the date Order No. 5449 was served.

In response, respondents filed the following statement on November 19, 1998:

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<sup>1</sup> Compact, tit. II, art. XI, § 11, & art. XII, § 3.

<sup>2</sup> In re Olanders Clark, t/a Cloud Nine Coachways, & Cloud Nine Coachways, Inc., No. AP-98-08, Order No. 5302 (Apr. 6, 1998).

<sup>3</sup> See Commission Regulation No. 66 (setting 180-day time limit for complying with conditions of grant).

This is to advise you that effective September 19, 1998 Cloud Nine Coachways, Inc. (CNC) was converted from a Chapter 11 Bankruptcy to Chapter 7. Therefore, Olanders Clark t/a Cloud Nine Coachways & Cloud Nine Coachways, Inc. are no longer in business. All records pertaining to Cloud Nine Coachways, Inc. are now the property of the Bankruptcy Courts.

While respondents' statement satisfies their obligation under Commission Rule No. 28 to confirm compliance with the cease-and-desist directive of Order No. 5449, respondents' bankruptcy status does not relieve them of their obligation to produce the documents demanded by Order No. 5449. The Bankruptcy Code acts as a brake neither on the Commission's investigation nor on respondents' compliance therewith.

Our investigation of possible statutory and regulatory violations by respondents is not designed to gain control over respondents' assets. It is designed to enforce the safety and welfare provisions of the Compact and the regulations promulgated thereunder. As such, it is exempt from the automatic stay provisions of the Bankruptcy Code and unlikely to impair the Bankruptcy Court's jurisdiction.<sup>4</sup>

Similarly, the Bankruptcy Court's jurisdiction should not act as an impediment to respondents' production of ordinary business records. Upon commencement of a case under the Bankruptcy Code, the debtor's property becomes property of the bankruptcy estate.<sup>5</sup> The Bankruptcy Court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee of the estate if the trustee does not already possess it.<sup>6</sup> Papers filed with the Court are public records open to examination.<sup>7</sup> Thus, while the Court has jurisdiction over the debtor's records, the records are not the property of the Court; they are the property of the estate and subject to the trustee's control.

The trustee (or debtor in possession) is required to manage and operate the property in his possession according to the requirements of the valid laws of the State in which the property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.<sup>8</sup> Respondents' principal place of business at the time they filed for bankruptcy was in the State of Maryland. The Compact is a valid law of the State of Maryland.<sup>9</sup>

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<sup>4</sup> See Board of Governors v. MCorp Financial, Inc., 502 U.S. 32, 41-42 (1991) (discussing ongoing, nonfinal investigation of bank).

<sup>5</sup> 11 U.S.C. § 541.

<sup>6</sup> 11 U.S.C. § 542(e).

<sup>7</sup> 11 U.S.C. § 107.

<sup>8</sup> 28 U.S.C. § 959.

<sup>9</sup> MD. TRANSP. CODE ANN. § 10-203 (1993).

The Compact mandates that the Commission "shall have access at all times to the accounts, records, memoranda, lands, buildings, and equipment of any carrier for inspection purposes."<sup>10</sup> This mandate applies "to any person controlling, controlled by, or under common control with a carrier subject to [the Compact], whether or not that person otherwise is subject to [the Compact]."<sup>11</sup> "For the purpose of an investigation or other proceeding under [the Compact], the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry."<sup>12</sup>

Thus, it is clear from the foregoing that respondents must comply with the Compact even in bankruptcy. They may do so for purposes of this investigation by having the trustee(s), or debtor(s) in possession, file copies of the documents specified in Order No. 5499. We do not need the originals at this juncture.

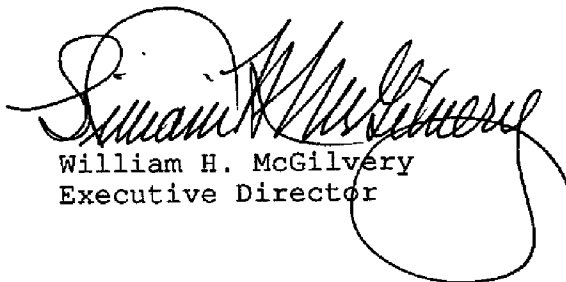
THEREFORE, IT IS ORDERED:

1. That respondents shall have thirty days to produce copies of the documents required by Order No. 5449 or show cause why Certificate No. 318 should not be revoked under Article XI, Section 10, of the Compact for respondent's willful failure to comply with Order No. 5449.

2. That in light of respondents' statement that their estates are to be liquidated under Chapter 7 of the Bankruptcy Code and that they are "no longer in business," respondents shall have thirty days to show cause why Certificate No. 318 should not be revoked under Article XI, Section 10, of the Compact for the willful failure of Olanders Clark to "provide safe and adequate transportation service, equipment, and facilities" as mandated by Article XI, Section 5(a), of the Compact.

3. That respondents may file within 15 days from the date of this order a request for oral hearing, containing reasonable grounds for such a hearing, including a description of the evidence to be adduced and an explanation of why it cannot be adduced without a hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON AND MILLER:

  
William H. McGilvery  
Executive Director

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<sup>10</sup> Compact, tit. II, art. XII, § 1(b).

<sup>11</sup> Compact, tit. II, art. XII, § 1(c).

<sup>12</sup> Compact, tit. II, art. XIII, § 1(e).